

JAN 23 1968

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1968

No. ~~100~~ /1

IGOR A. IVANOV, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

**On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Third Circuit**

**MOTION TO AMEND THE PETITION FOR CERTIORARI
BY ADDING AN ADDITIONAL QUESTION
PRESENTED**

**EDWARD BENNETT WILLIAMS
MICHAEL E. TIGAR
1000 Hill Building
Washington, D. C. 20006
*Counsel for Petitioner***

IN THE
Supreme Court of the United States
OCTOBER TERM, 1967

No. 885

IGOR A. IVANOV, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court
of Appeals for the Third Circuit

**MOTION TO AMEND THE PETITION FOR CERTIORARI
BY ADDING AN ADDITIONAL QUESTION
PRESENTED**

Petitioner Igor A. Ivanov, through his undersigned counsel, moves this Court for leave to amend the petition for certiorari filed on his behalf by adding thereto the following additional "Question Presented":

5. Whether, when the Department of Justice has in its possession recordings of a criminal defend-

ant's voice—or of the voice of a co-defendant—obtained through electronic surveillance, the Department may refuse unqualifiedly to disclose the existence and contents of those recordings unless in its untrammelled discretion, free from judicial control, it determines *both* that the surveillance “is or may be unlawful” and “that the government has thereby obtained any information which is arguably relevant to the litigation involved.”

In support of this motion, petitioner invites the Court's attention to footnote 1 in the Petition for Certiorari filed herein on December 5, 1967. In that footnote, it was stated that no question was presented concerning illegal electronic surveillance on the assumption that, were there any, the Solicitor General would disclose its existence. The Solicitor General has responded, citing his Memorandum in Opposition to Rehearing in *Kolod v. United States*, No. 133, October Term, 1967, and stating that the Department is relying on the position set forth in that memorandum as the basis for a refusal to make any statement concerning the existence *vel non* of electronic surveillance in this case. This position, first explained and justified in the *Kolod* memorandum, filed on or about January 8, 1968, gives rise to the additional question here set forth.

The question thus raised is virtually identical to that presented by the Petition for Rehearing in *Kolod* and petitioner respectfully asks the Court to consider in support of this motion, and—should this motion be granted—in support of the amended Petition for Certiorari, all the arguments set forth in the *Kolod* Petition as well as in the *Kolod* Reply Memorandum to Memorandum of the United States in Opposition.

In addition, petitioner notes that the chairman of the ex parte and secret Justice Department committee which reviews electronic surveillance materials is himself a signatory to the Brief for the United States in Opposition filed herein. Mr. Yeagley's personal involvement on the prosecution side of this case emphasizes the questions of fairness and fitness to judge one's own cause tendered by the *Kolod* rehearing petition. Cf. 5 U.S.C. § 554(d) (internal separation of functions in administrative proceedings).

The United States' position in this case, coming so closely upon the heels of its *Kolod* memorandum, underscores the importance to the administration of federal criminal justice of a declaration by this Court concerning the propriety of the Department's self-adopted and self-serving policy.

WHEREFORE, the petitioner respectfully prays that the Court permit amendment of the "Questions Presented" in the Petition for Certiorari by the addition of the additional Question tendered herein.

Respectfully submitted,

EDWARD BENNETT WILLIAMS
MICHAEL E. TIGAR
1000 Hill Building
Washington, D. C. 20006
Counsel for Petitioner

January 1968